



# United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

IN REPLY REFER TO:  
7202.4-OS-2018-00959

October 22, 2018

Via email: [ychi@earthjustice.org](mailto:ychi@earthjustice.org)

Yuting Chi  
Earthjustice  
633 17<sup>th</sup> Street, Suite 1600  
Denver, CO 80202

*Re: Sierra Club and Friends of the Earth v. U.S. Department of the Interior, 3:18-cv-03799*

Dear Ms. Chi:

On April 2, 2018, Ms. Marta Darby of Sierra Club and Ms. Nicole Ghio of Friends of the Earth filed a Freedom of Information Act (FOIA) request seeking the following:

1. All records reflecting any communication, written or verbal, to any Chief FOIA Officer, Department FOIA Policy Staff, FOIA and Privacy Act Appeals Officer, Bureau FOIA Officer, FOIA Officer, Action Office, Office of the Secretary FOIA Officer, Electronic FOIA tracking system user, FOIA Public Liaison, Records Management Officer, or employee, in any program, office, regional office, department, bureau, or other subdivision within Interior, concerning any policies, procedures, guidelines, protocols, directives, or other instructions on the processing, assignment, handling, or disposition of FOIA requests received by Interior. These include but are not limited to records regarding the release of records, determinations regarding fee waiver requests, assignment to Action Offices, processing within Action Offices, collection and review of responsive records, approvals to release or withhold records, claims of exemption, or instructions to subject matter experts;
2. All records reflecting any communication, written or verbal, involving the Office of the Secretary, Office of the Solicitor, Head of Bureau, Director, or Deputy Director, concerning the handling, processing, or disposition of FOIA requests;
3. All records reflecting any communication, written or verbal, involving the designated Chief FOIA Officer at Interior, concerning the handling, processing, or disposition of FOIA requests;
4. All records reflecting any communication, written or verbal, between any representative of the Department's FOIA program and any FOIA Officer, Department FOIA Policy Staff, FOIA Public Liaison, the Chief FOIA Officer at

Interior, Head of Bureau, Bureau FOIA Officer, the Office of General Counsel, Bureau Office, Action Office, or the Office of Inspector General, concerning the handling, processing, or disposition of FOIA requests; and

5. All records reflecting any communication, written or verbal, to or from the designated Chief FOIA Officer at Interior, or any other FOIA Officer, concerning instituting a process for review of FOIA responses by the Interior's Office of the Executive Secretariat and Regulatory Affairs prior to their release.

Ms. Darby's and Ms. Ghios' request was received by the Office of the Secretary FOIA office on April 2, 2018, and acknowledged on April 13, 2018. We provided an initial partial response to Ms. Darby's and Ms. Ghios' request on August 30, 2018. We provided a second partial response to Ms. Darby's and Ms. Ghios' request on October 1, 2018.

We are writing today to provide a third partial response to Ms. Darby's and Ms. Ghios' request, as clarified through subsequent discussions, and pursuant to our search and production agreement. Additional records will arrive under separate cover. We have enclosed one file consisting of 219 pages.

Of those 219 pages, 214 pages are being released in full and 5 pages contain redactions as described below.

**Portions of the documents may be redacted pursuant to Exemption 6 of the FOIA (5 U.S.C. § 552(b)(6)) because they fit certain categories of information:**

### **Personal Information**

Exemption 6 allows an agency to withhold "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The courts have held that the phrase "similar files" involves all information that applies to a particular person. Hertzberg v. Veneman, 273 F. Supp. 2d 67, 85 n.11 (D.D.C. 2003).

To determine whether releasing requested information would constitute a clearly unwarranted invasion of personal privacy, we are required to perform a "balancing test." This means that we must weigh the individual's right to privacy against the public's right to disclosure.

- (1) First, we must determine whether the individual has a discernable privacy interest in the information that has been requested.
- (2) Next, we must determine whether release of this information would serve "the public interest generally" (i.e., would "shed light on the performance of the agency's statutory duties").
- (3) Finally, we must determine whether the public interest in disclosure is greater than the privacy interest of the individual in withholding.

The information that we are withholding consists of personal information, and we have determined that the individuals to whom this information pertains have a substantial privacy interest in it.

Additionally, we have determined that the disclosure of this information would shed little or no light on the performance of the agency's statutory duties and that, on balance, the public interest to be served by its disclosure does not outweigh the privacy interest of the individuals in question, in withholding it. Nat'l Ass'n of Retired Fed. Employees v. Horner, 879 F.2d 873, 879 (D.C. Cir. 1989).

In summation, we have determined that release of the information that we have withheld would constitute a clearly unwarranted invasion of the privacy of these individuals, and that it therefore may be withheld, pursuant to Exemption 6.

**Portions of the enclosed documents have been redacted pursuant to Exemption 7 of the FOIA (5 U.S.C. § 552(b)(7)).**

Exemption 7 of the FOIA protects from disclosure "records or information compiled for law enforcement purposes" if such records fall within one or more of six additional categories. The records withheld under Exemption 7 were compiled for law enforcement purposes and therefore meet the threshold requirement of Exemption 7.

**7(C)**

Exemption 7(C) protects personal information in law enforcement records where release could reasonably be expected to constitute an unwarranted invasion of personal privacy. Here, releasing records you are seeking would constitute an unwarranted invasion of privacy because they identify individuals referenced in law enforcement records and the release of this information would not shed light on an agency's performance of its statutory duties. Therefore, we are withholding records under Exemption 7(C).

Rachel Spector, Attorney-Advisor, in the Office of the Solicitor, was consulted in reaching this decision. Clarice Julka, Office of the Secretary FOIA Officer, is responsible for making this decision.

If you have any questions about our response to your request, you may contact Pamela Johann, Assistant United States Attorney, by phone at (415) 436-7025 or by email at [Pamela.Johann@usdoj.gov](mailto:Pamela.Johann@usdoj.gov).

Sincerely,

Clarice Julka  
Office of the Secretary  
FOIA Officer

Electronic Enclosures